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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,839	03/21/2000	Michael R. Van De Mark	UMO 1528	7157

321 7590 04/10/2002

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

MICHL, PAUL R

ART UNIT	PAPER NUMBER
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1714

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DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

T-D-8

## Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 3/27/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-59 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-59 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Claims 1-59 are rejected under 35 U.S.C. § 102(b) as being anticipated by Motier or Craig.

Claims 1-59 are rejected under 35 U.S.C. § 102(e) as being anticipated by Bumanlag or Rauls.

Claims 1-59 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Motier or Craig or Bumanlag or Rauls. The Examiner's position remains as stated in the October 1 Office action. Applicants' arguments have been considered but are not persuasive. Applicants' Declaration has been considered but is deemed to be of no probative value. Motier is cited for the epoxy resin esterified with a fatty acid derived from linseed oil. This product meets applicants' claimed ester. Applicants argue that this product does not function as a coalescent aid. This argument is not persuasive. Since this product is within the scope of applicants' claimed ester, there is a presumption that this product qualifies as a coalescent aid within the scope of applicants' claims. This a prima facie case of lack of novelty and obviousness. If it is applicants' position that this product does not function as a coalescent aid, applicants had an opportunity to submit evidence in affidavit or declaration form to support their position. No such affidavit or declaration has been submitted. Therefore, applicants have no basis to argue that this product of Motier does not function as a coalescent aid. Craig is cited for the esters of linoleic acid in claim 2.

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Applicants' argument is that Craig does not disclose a coalescent aid. This is a prima facie case of lack of novelty and obviousness. If it is applicants' position that the esters of linoleic acid in claim 2 of Craig do not function as coalescent aids, applicants had an opportunity to submit evidence in affidavit or declaration form to support their position. No such affidavit or declaration has been submitted. Bumanlag is cited for the disclosure of ethylene oxide condensates of linoleic acid. Applicants argue that Bumanlag does not suggest a specific composition or amount which would function as coalescent aid. These arguments are not persuasive. One can determine through routine experimentation the desirable number of ethylene oxide units to be reacted with linoleic acid to form the ester. Applicants' argument concerning amounts is not persuasive because there is no corresponding limitation in the claims concerning the amount of ester. Applicants' Declaration is inadequate. In the Declaration applicants do not specifically indicate the compounds which qualify as the ester coalescent aid. The Declaration is also inadequate because it fails to establish prior invention by applicants for compositions comprising ethylene oxide condensates of linoleic acid as the ester coalescent aid. Rauls is cited for the disclosure of methyl esters of soybean oil. Applicants' argument concerning Rauls depends upon the declaration. The Declaration is inadequate as against Rauls. Applicants have not

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shown in the Declaration prior invention for compositions comprising methyl esters of soybean oil as the ester coalescent aid.

**THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Michl whose telephone number is (703) 308-2451. The examiner can

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normally be reached on Monday through Friday from 7:30 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for this Group is (703) 305-5433.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

PRMichl:cdc

April 8, 2002

  
**PAUL R. MICHL**  
**PATENT EXAMINER**  
**ART UNIT 156**